

Supreme Court Issues  
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July 15, 2020

- Arbitration—Enforcement—Superior Court Jurisdiction—Scope—Claim of Breach of Arbitration Contract Based on Acts During Arbitration.
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## Cases Not Yet Set

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### **Attorney and Party Misconduct—Asking About Excluded Evidence—Criticizing Defendant’s Choice of Witness—Prompting Improper Testimony—Failure to Disclose Evidence Undermining Plaintiffs’ Claims**

Whether in this wrongful death lawsuit, the jury’s finding that the defendant was liable should be reversed on the basis of misconduct by the plaintiffs’ attorney at trial or on the basis of the failure of two plaintiffs to disclose evidence that might have undermined their claims for loss of consortium and other noneconomic damages.

No. 98296-1, *Coogan, et al. (plaintiffs) v. Genuine Auto Parts Co., et al. (respondents)*. (See also: [Product Liability—Asbestos-Related Disease—Damages—Excessiveness—Pain and Suffering Award—Shock to Conscience—Excessiveness of Other Damages](#); [Product Liability—Asbestos-Related Disease—Evidence—Expert Testimony—Testimony as to Decedent’s Preexisting Alcohol-Related Condition—Exclusion—Unfair Prejudice](#)).

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### **Controlled Substances—Punishment—Uniform Controlled Substance Act—Mandatory Sentence—Sentencing Reform Act—Exception—“Another Term of Confinement.”**

In this prosecution for sale of heroin for profit, [RCW 69.50.410\(1\)](#), whether [RCW 69.50.410\(3\)\(a\)](#), which provides that a person convicted of violating subsection (1) by selling heroin “shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services,” sets forth “another term of confinement” within the meaning of [RCW 9.94A.505\(2\)\(a\)\(i\)](#), thus operating as an exception to sentencing grids established by the Sentencing Reform Act.

No. 98201-5, *State (petitioner) v. Peterson (respondent)*.

[12 Wn. App. 2D 195 \(2020\).](#)

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**Courts—Supreme Court—Jurisdiction—Original Jurisdiction—Extraordinary Writs—State Officers—What Constitutes—Municipal Court Judges—Authority of Presiding Judge—Transfer and Consolidation of Criminal Cases**

Whether the presiding judge of a municipal court is a “state officer” over whom the Washington Supreme Court has original jurisdiction for purposes of a petition for a writ of prohibition or mandamus under Washington Constitution Article IV, §4, and if so, whether a presiding judge of the municipal court has authority to transfer and consolidate multiple district court criminal cases concerning the same defendant into one municipal department before a single judge.

No. 98319-4, *Ladenburg* (petitioner) v. *Henke* (respondent).

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**Criminal Law—Evidence—Post-Crime Confidential Informant Agreement Between Police and Alleged Victim—Evidence of Details of Agreement—Admissibility**

Whether in this prosecution for attempted first degree murder, the trial court erroneously precluded the defendant from cross-examining the alleged victim about the details of a confidential informant agreement between the alleged victim and police entered into after the commission of the crime.

No. 98056-0, *State* (respondent) v. *Orn* (petitioner). (See also: [Homicide—Attempted Murder—Attempted First Degree Murder—To-Convict Instruction—Sufficiency—Elements—“Premeditation.”](#)).

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## **Criminal Law—Homicide—Aggravated First Degree Murder—Punishment—Juvenile Offender—Resentencing—Effective Life Sentence—Validity**

Whether under the Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), a 46-year minimum sentence for aggravated murder committed by a 17-year-old offender constitutes an unlawful de facto life sentence, and whether the trial court abused its discretion in resentencing the offender under the *Miller*-fix statute, [RCW 10.95.030](#).

97766-6, *State (respondent) v. Haag (petitioner)*.

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## **Criminal Law—Motion to Vacate Judgment and Sentence—Order for New Sentencing Hearing—Appealability by State**

Whether the State has the right to appeal from a trial court order granting a new sentencing hearing pursuant to a motion under [CrR 7.8](#).

No. 98326-7, *State (petitioner) v. Waller (respondent)*.

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## **Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller* Fix—Indeterminate Sentence Review Board—Petition for Early Release—Factors—Improper Denial of Release—Remedy**

Whether in this offender’s petition for early release pursuant to [RCW 9.94A.730](#) for crimes committed as a juvenile, the Indeterminate Sentence Review Board, in denying release, considered improper factors, and if so, whether the proper remedy is to remand to the board for reconsideration under appropriate evaluation factors or remand with directions to release the offender after establishing release conditions.

No. 97973-1, *In re Pers. Restraint of Betancourt; Betancourt (petitioner) v. Indeterminate Sentence Review Bd. (respondent)*.

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**Criminal Law—Rape—Force or Coercion—Defense of Consent—State’s Burden of Proof—Jury Instruction—Necessity**

Whether in this prosecution for second degree rape by forcible compulsion in which the defendant asserted the defense of consent, the State bore the burden to prove the absence of consent, and if so, whether the jury should have been so instructed.

No. 98067-5, *State (respondent) v. Knapp (petitioner)*.

[11 Wn. App. 2d 375 \(2019\)](#).

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**Criminal Law—Sexual Offenses—Punishment—Special Sex Offender Sentencing Alternative—Eligibility—Defendant’s Established Relationship With or Connection to Victim—What Constitutes**

Whether in this prosecution for first degree child molestation, the defendant had a sufficient connection to the victim to make him eligible for the special sex offender sentencing alternative pursuant to [RCW 9.94A.670\(2\)\(a\)](#), under which an offender is eligible only if the offender had a sufficient relationship with or connection to the victim such that the crime itself did not constitute the sole connection.

No. 98066-7, *State (respondent) v. Pratt (petitioner)*.

[11 Wn. App. 2d 450 \(2019\)](#).

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**Homicide—Attempted Murder—Attempted First Degree Murder—To-Convict Instruction—Sufficiency—Elements—“Premeditation.”**

Whether in this prosecution for attempted first degree murder, the “premeditation” element of the completed crime of first degree murder should have been included in the to-convict instruction.

No. 98056-0, *State* (respondent) *v. Orn* (petitioner). (See also: [Criminal Law—Evidence—Post-Crime Confidential Informant Agreement Between Police and Alleged Victim—Evidence of Details of Agreement—Admissibility](#)).

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**Juveniles—Juvenile Justice—Disposition—Manifest Injustice Disposition—Aggravating Factors—Nonstatutory Factors**

Whether the trial court in this juvenile criminal adjudication erroneously relied on nonstatutory aggravating factors in imposing a manifest injustice disposition, including the juvenile’s need for substance abuse and mental health treatment.

No. 96894-2, *State* (respondent) *v. M.S.* (petitioner).

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**Juveniles—Juvenile Justice—Plea of Guilty—Disposition—Manifest Injustice Disposition—Due Process—Aggravating Factors—Preplea Notice—Necessity**

Whether due process principles require that a juvenile charged with a crime in juvenile court receive notice before the entry of a guilty plea of the aggravating factors that may be relied upon to support a manifest injustice disposition.

No. 96143-3, *State* (respondent) *v. D.L.* (petitioner).

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**Juveniles—Parental Relationship—Termination—Adoption—Degree of Proof—Clear, Cogent, and Convincing Evidence—What Constitutes—Parental Unfitness—Findings—Sufficiency**

Whether in proceedings involving a petition by a potential adoptive parent to terminate a biological father’s parental rights to a child, the trial court relied on improper factors and lacked clear, cogent, and convincing evidence that the father failed to perform parental duties in a manner that showed a substantial lack of regard for his parental obligations.

No. 97390-3, *In re the Adoption of K.M.T.*

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**Limitations of Actions—Residential Landlord-Tenant Act—Action for Return of Damage Deposit—Statute of Limitations for Recovery of Personal Property—Applicability**

Whether a former residential tenant’s lawsuit alleging his landlord failed to provide a timely final statement of reasons for failing to return his damage deposit was subject to the two-year “catchall” statute of limitations under RCW 4.16.130 or the three-year statute of limitations under RCW 4.16.080(2) for actions to recover personal property.

No. 98024-1, *Silver* (petitioner) *v. Rudeen Mgmt. Co., Inc.* (respondent).

[10 Wn. App. 2d 676, 449 P.3d 1067 \(2019\).](#)

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**Mandamus—Availability—Governor—Department of Corrections—Emergency Powers—Pandemic Response—Prisons—Health and Safety of Offenders Susceptible to Pandemic—Release of At Risk Population**

Whether this court by writ of mandamus may order the Governor or Secretary of the Department of Corrections to adopt early release procedures for certain at risk offenders in state prisons or county jails to protect the health and safety of such offenders during an emergency pandemic crisis.

No. 98317-3, *Colvin, et al.* (petitioners) v. *Jay Inslee, et al.* (respondents).

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**Negligence—Res Ipsa Loquitur—Elements—Presence of Negligence—Proof—Result Not be Expected Without Negligence—Injury or Injury-Causing Act or Occurrence as Relevant “Result.”**

Whether in a negligence action seeking to establish breach of a duty of care in a roller coaster accident on the basis of res ipsa loquitur, proof that the “result” is one that would not be expected in the absence of negligence must consist of proof that the injury-causing act or occurrence is a result not expected or may also consist of proof that the injury suffered would not be expected without negligence.

No. 97503-5, *Brugh* (respondent) v. *Fun-Tastic Rides Co., et al.* (petitioners).

8 Wn. App. 2d 176 (2019).

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**Negligence—Wrongful Death—Student—Action Against School District—Duty and Standard of Care—Proximate Cause—Legal Causation—Factual Causation—Possibility of Multiple Causes**

Whether in this negligence action against a school district stemming from the death of a student struck by a vehicle during a school activity off school grounds, the actions of a school staff member constituted a legal and a factual cause of the student’s death.

No. 98280-5, *Meyers (respondent) v. Ferndale School Dist. (petitioner)*.

[12 Wn. App. 2d 254 \(2020\)](#).

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**\*Open Government—Public Disclosure—Public Records—Exemptions—Public Agency Personnel Files—Photographs and Birthdates of Criminal Justice Agency Employees—News Media—YouTube Channel—Applicability**

Whether in this action seeking access to law enforcement agency personnel records under the Public Records Act, a YouTube channel that concerns claims of government corruption qualifies as “news media” for purposes of [RCW 5.68.010\(5\)](#), entitling it to employee photographs and birthdates under [RCW 42.56.250\(8\)](#).

No. 98768-8, *Green (respondent) v. Pierce County (petitioner)*.

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**Personal Injury—Premises Liability—Dog Bite—Landlord Liability to Tenant’s Guest**

Whether, in this lawsuit for personal injury inflicted when a dog belonging to a residential tenant bit a guest, the tenant’s landlord may be liable under a premises liability theory.

No. 98221-0, *Blanco (petitioner) v. Sandoval (respondent)*.

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**Personal Restraint—Petition—Punishment—Juvenile Offender—Pre-Sentencing Reform Act Indeterminate Sentence—Parole—“*Miller*-fix” statute—Applicability**

Whether the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), or the “*Miller*-fix” statute, [RCW 9.94A.730\(1\)](#), authorizes the Indeterminate Sentencing Review Board to consider for parole under the *Miller*-fix statute an offender sentenced under the former indeterminate sentencing statutes to multiple consecutive indeterminate terms for crimes committed when he was a juvenile.

No. 97689-9, *In re Pers. Restraint of Brooks* (petitioner).

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**Personal Restraint—Petition—Timeliness—Significant Change in Law—*Tsai* Decision**

Whether this court’s decision in *In re Personal Restraint of Yung-Chen Tsai*, [183 Wn.2d 91, 351 P.3d 138 \(2015\)](#), constituted a retroactive change in the law as to the interpretation of [RCW 10.40.200](#), exempting from the one-year time limit on collateral relief a personal restraint petition seeking to withdraw a guilty plea under that statute on the basis of misinformation as to immigration consequences.

No. 98026-8, *In re Pers. Restraint of Garcia-Mendoza* (petitioner).

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**Product Liability—Asbestos-Related Disease—Damages—Excessiveness—Pain and Suffering Award—Shock to Conscience—Excessiveness of Other Damages**

Whether in this wrongful death product liability lawsuit, the Court of Appeals erred in reversing the decedent's estate's \$30 million pain and suffering jury award on the basis that it was so excessive that it shocked the court's conscience, and whether the other portions of the judgment were excessive.

No. 98296-1, *Coogan, et al. (petitioners) v. Genuine Auto Parts Co., et al. (respondents)*. (See also: [Product Liability—Asbestos-Related Disease—Evidence—Expert Testimony—Testimony as to Decedent's Preexisting Alcohol-Related Condition—Exclusion—Unfair Prejudice; Attorney and Party Misconduct—Asking About Excluded Evidence—Criticizing Defendant's Choice of Witness—Prompting Improper Testimony—Failure to Disclose Evidence Undermining Plaintiffs' Claims](#)).

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**Product Liability—Asbestos-Related Disease—Evidence—Expert Testimony—Testimony as to Decedent's Preexisting Alcohol-Related Condition—Exclusion—Unfair Prejudice**

Whether in this wrongful death lawsuit based on the decedent's asbestos-related disease, the trial court erred in excluding a defense expert's testimony regarding the decedent's preexisting alcohol-related condition.

No. 98296-1, *Coogan, et al. (petitioners) v. Genuine Auto Parts Co., et al. (respondents)*. (See also: [Product Liability—Asbestos-Related Disease—Damages—Excessiveness—Pain and Suffering Award—Shock to Conscience—Excessiveness of Other Damages; Attorney and Party Misconduct—Asking About Excluded Evidence—Criticizing Defendant's Choice of Witness—Prompting Improper Testimony—Failure to Disclose Evidence Undermining Plaintiffs' Claims](#)).

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**Public Assistance—Medical Care—Medicaid—Benefits—Determination—State Rules—“Shared Benefit” Rule—“Informal Support” Rule—Validity**

Whether “shared benefit” and “informal support” regulations employed by the available to pay in-home long-term personal care workers violate state and federal wage laws and were enacted in excess of statutory authority and arbitrarily and capriciously.

No. 97216-8, *SEIU 775* (petitioner) v. *State, et al.* (respondents).

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**Sexual Offenses—Victim Testimony—Corroboration—Instruction—Validity**

Whether in a prosecution for a sex offense, an instruction to the jury that it is not necessary that the alleged victim’s testimony be corroborated in order to convict the defendant constitutes an impermissible comment on the evidence in violation of article IV, section 16 of the Washington Constitution.

No. 96034-8, *State* (respondent) v. *Svalesson* (petitioner).

[Supplemental Petition for Review.](#)

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**Torts—Interference with Corpse—Standing—Next of Kin—Statutory Definition—Necessity**

Whether, in this action for tortious interference with a corpse, only those individuals identified as “next of kin” as defined by [RCW 68.50.160](#) at the time of a decedent’s death have standing to bring a claim.

No. 98514-6, *Fox* (plaintiff) v. *City of Bellingham* (defendant).

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## **Trial—Due Process—Fair Trial—Implicit Bias—Motion for New Trial—Evidentiary Hearing—Necessity**

Whether in this personal injury action, the trial court should have held an evidentiary hearing after the plaintiff, who is African American, moved for a new trial claiming that defense counsel, the court, and the jury displayed implicit racial bias.

No. 97672-4, *Henderson* (petitioner) v. *Thompson* (respondent).

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## **Writ of Prohibition—Ex Parte Superior Court Proceeding—Setting of Bail at Contested District Court Hearing—Subsequent Increase in Bail at Ex Parte Proceeding—Validity**

Whether in this criminal prosecution in which bail was originally set at a contested hearing at first appearance and the defendant thereafter did not violate the conditions of his release, the superior court improperly increased bail in a subsequent ex parte proceeding at the request of the prosecuting attorney, and if so, whether this court should issue a writ of prohibition prohibiting increasing bail in ex parte proceedings.

No. 98154-0, *Pimental* (petitioner) v. *The Judges of King County Superior Court, et al.* (respondents). (See also: [Writ of Prohibition—Jurisdiction of Supreme Court—State Officer—King County Prosecuting Attorney](#)).

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## **Writ of Prohibition—Jurisdiction of Supreme Court—State Officer—King County Prosecuting Attorney**

Whether the King County Prosecuting Attorney is a state officer for purposes of an original action for a writ of prohibition filed in the Washington Supreme Court pursuant to article IV, section 4, of the Washington State Constitution, thus permitting the exercise of jurisdiction over the prosecuting attorney.

No. 98154-0, *Pimental* (petitioner) v. *The Judges of King County Superior Court, et al.* (respondents). (See also: [Writ of Prohibition—Ex Parte Superior Court Proceeding—Setting of Bail at Contested District Court Hearing—Subsequent Increase in Bail at Ex Parte Proceeding—Validity](#)).

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**Arbitration—Enforcement—Superior Court Jurisdiction—Scope—Claim of Breach of Arbitration Contract Based on Acts During Arbitration**

Whether in connection with an action that went to contractual arbitration, the superior court had jurisdiction to address the plaintiff's motion to terminate arbitration and rescind the arbitration agreement on the basis the arbitrator and the defendant breached the agreement during the course of arbitration.

No. 98083-7, *Burgess* (petitioner) v. *Lithia Motors* (respondent). (Oral argument 6/9/20).

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**Building Regulations—Conditional Use Permit—Decision of Board of County Commissioners on Appeal of Conditional Use Permit—Judicial Review—Land Use Petition Act—21-Day Limitation Period—Commencement—Adoption of Resolution by Board of County Commissioners—Quasi-Judicial Decision—Written Decision**

Whether a Yakima County Board of Commissioners resolution rejecting an appeal of a conditional use permit constituted a quasi-judicial decision, triggering the 21-day time limit for filing a land use petition upon adoption of the resolution pursuant to [RCW 36.70C.040\(4\)\(b\)](#), or whether under Yakima County Code [16B.09.050\(5\)](#) the board's decision was a final decision triggering the time limit only when it issued and gave notice of a written decision within the meaning of [RCW 36.70C.040\(4\)\(a\)](#).

No. 97910-3, *Confederated Tribes & Bands of the Yakama Nation* (petitioner) v. *Yakima County, et al.* (respondent). (Oral argument 6/11/20).

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**Consumer Protection—Action for Damages—Unfair Trade Practice—Automobile Dealer and Manufacturer Regulations—False or Deceptive Statements—Materiality—Necessity**

Whether in this consumer lawsuit stemming from a new vehicle sale in which the vehicle window sticker mistakenly stated that the vehicle was equipped with a certain inexpensive feature, the plaintiff had to prove the misstatement was material in order to prove a deceptive act or practice for purposes of the Consumer Protection Act.

No. 97576-1, [Young, et al. \(petitioner\) v. Toyota Motor Sales, USA \(respondent\)](#). (Oral argument 5/28/20).

[9 Wn. App. 2d 26 \(2019\)](#).

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**Controlled Substances—Possession—Unwitting Possession—Affirmative Defense—Validity—Due Process**

Whether requiring a defendant charged with possession of a controlled substance to prove the affirmative defense of unwitting possession violates due process principles.

No. 96873-0, [State \(respondent\) v. Blake \(petitioner\)](#). (Oral argument 6/11/20).

[Unpublished](#).

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**Counties—Form of Government—Noncharter County—Legislative Body—Statute Requiring County to Have Five Commissioners Elected by District—Validity**

Whether [RCW 36.32.052](#), which requires that by 2022 the board of commissioners of any noncharter county with 400,000 or more people (currently only Spokane County) consist of five members elected by district, violates article XI, section 4 of the Washington Constitution (requiring the legislature to establish a uniform system of county government) and article XI, section 5 (requiring the legislature to provide for election of boards of county commissioners by general and uniform laws).

No. 97739-9, *Spokane County, et al.* (appellants) v. *State* (respondent). (Oral argument 6/25/20).

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**Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence**

Whether the trial court in a criminal prosecution erred in sanctioning the State for moving to amend the information despite the court’s ruling that the State acted within its rights in doing so.

No. 96365-7, *State* (respondent) v. *Numrich* (petitioner). (Oral argument 6/25/20). (*See also*: [Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting; Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review](#)).

Consolidated with No. 96566-8, *State* (respondent) v. *Numrich* (plaintiff).

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## **Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense— Merger Doctrine—Felony Murder—First Degree Robbery**

Whether in a prosecution for felony murder predicated on first degree robbery, the robbery conviction merges into the felony murder conviction for double jeopardy purposes even if the killing may have had a purpose independent of the robbery.

No. 97066-1, *In re Pers. Restraint of Knight* (respondent). (Oral argument 5/5/20). (*See also*: [Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Merger Doctrine—First Degree Robbery—Second Degree Assault](#)).

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## **Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense— Merger Doctrine—First Degree Robbery—Second Degree Assault**

Whether in this prosecution for first degree robbery predicated on second degree assault and a separate second degree assault charge, the assault conviction merged into the robbery conviction for double jeopardy purposes on the basis that the jury's guilty verdict did not indicate whether separate assaultive acts supported each conviction.

No. 97066-1, *In re Pers. Restraint of Knight* (respondent). (Oral argument 5/5/20). (*See also*: [Criminal Law—Former Jeopardy—Multiple Convictions—Same Offense—Merger Doctrine—Felony Murder—First Degree Robbery](#)).

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**Criminal Law—Right to Confront Witnesses—Statement of Nontestifying Witness—Statements Made To Sexual Assault Nurse Examiner—Testimonial or Nontestimonial Statement—Harmless Error**

Whether in this prosecution for second degree rape by forcible compulsion, the admission of statements made by the nontestifying victim to a sexual assault nurse examiner violated the defendant’s right to confront witnesses, and if so, whether the violation was harmless.

No. 96783-1, [State \(petitioner\) v. Burke \(respondent\)](#). (Oral argument 5/14/20).

[6 Wn. App. 2d 950 \(2018\)](#).

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**Criminal Law—Security—Physical Restraint of Defendant—Deference to Jail Policy—Harmless Error—Test**

Whether in this criminal prosecution the shackling of the defendant in pretrial proceedings and at trial without an individualized inquiry into the need for shackling may be deemed harmless error.

No. 97681-3, [State \(respondent\) v. Jackson \(petitioner\)](#). (Oral argument 6/9/20).(*See also: Criminal Law—Security—Physical Restraint of Defendant—Freedom from Restraint—Pretrial Proceedings—Individualized Assessment or Evidence in Support—Necessity*).

[10 Wn. App. 2d 136 \(2019\)](#).

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**Criminal Law—Security—Physical Restraint of Defendant—Freedom from Restraint—Pretrial Proceedings—Individualized Assessment or Evidence in Support—Necessity**

Whether in this criminal prosecution the trial court was constitutionally required to conduct an individualized inquiry into the need for shackling before permitting the defendant to be shackled during pretrial hearings.

No. 97681-3, *State* (respondent) *v. Jackson* (petitioner). (Oral argument 6/9/20). (*See also*: [Criminal Law—Security—Physical Restraint of Defendant—Deference to Jail Policy—Harmless Error—Test](#)).

[10 Wn. App. 2d 136 \(2019\)](#).

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**Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting**

Whether in a prosecution stemming from a construction worker's death, the State was precluded under the general-specific rule from charging both manslaughter and the offense of violation of a safety regulation with death resulting.

No. 96365-7, *State* (respondent) *v. Numrich* (petitioner). (Oral argument 6/25/20). (*See also*: [Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review; Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence](#)).

Consolidated with 96566-8, *State* (respondent) *v. Numrich* (plaintiff).

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## **Criminal Law—Trial—Misconduct of Prosecutor—Argument—Prejudice— “War on Drugs”**

Whether in this controlled substances prosecution, the prosecutor’s references in opening statements and closing arguments to a “war on drugs” constituted prejudicial misconduct.

No. 97443-8, *State (respondent) v. Loughbom (petitioner)*. (Oral argument 6/11/20).

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## **Declaratory Judgment—Summary Judgment—Equitable Relief—Review— Standard of Review**

Whether in this action for a declaratory judgment in which the trial court granted equitable relief on summary judgment, the standard of appellate review of the relief is de novo or abuse of discretion.

No. 97690-2, *Borton & Sons, Inc. (respondent) v. Burbank Properties, LLC (petitioner)*. (Oral argument 5/28/20). (*See also*: [Vendor and Purchaser—Option to Purchase—Exercise of Option—Time of Performance—Equitable Grace Period—Inequity of Forfeiture—Significant Improvements to Land—Necessity](#)).

[9 Wn. App. 2d 599 \(2019\).](#)

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## **Elections—Fair Campaign Practices Act—Citizen Action—Action Not Commenced by State—Timeliness of Citizen Action**

Whether under former RCW 42.17.765(4)(a)(iii), a citizen's lawsuit challenging an alleged campaign practices violation is time-barred unless it is filed within 10 days after the citizen gives notice to the attorney general and the county prosecuting attorney of the citizen's intent to file suit unless those agencies commence an enforcement action.

No. 97109-9, *Freedom Found.* (appellant) v. *Teamsters Local 117, et al.* (respondents/cross-appellants). (Oral argument 5/26/20).

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No. 97111-1, *Freedom Found.* (appellant) v. *Serv. Emps. Int'l Unio Political Education & Action Fund* (respondent/cross-appellant).

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## **Government Liability—Negligence—Negligent Investigation—Common Law Duty—Mistaken Raid of Home**

Whether in this action for negligence against the city of Tacoma and others, the defendants owed the plaintiff a common law and actionable duty of care where city police officers attempting to effectuate an arrest mistakenly broke into the plaintiff's home and kept her in handcuffs even after realizing they were in the wrong home.

No. 97583-3, *Mancini* (petitioner) v. *City of Tacoma, et al.* (respondents). (Oral argument 5/5/20).

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## **Indians—Dependent Children—Shelter Care—Tribal Membership—“Reason to Know” Child is Indian Child—What Constitutes**

Whether in this dependency proceeding, there was “reason to know” at the initial shelter care hearing that the children were Indian children for purposes of the federal and state Indian Child Welfare Acts when there was evidence that the mother and children were eligible for membership in a federally recognized Indian tribe and the dependency petition stated there was reason to know the children were Indian children.

No. 98003-9, *In the Matter of the Dependency of Z.J.G. & M.E.J.G.* (Oral argument 6/25/20).

[10 Wn. App. 2d 466 \(2019\)](#)

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## **Indictment and Information—Amendment—Additional Charge—Broadening of Charge—Different Felony Levels and Penalties—Improper Purpose—Effect on Pending Discretionary Review**

Whether the State in a criminal prosecution was entitled to amend the information to add a first degree manslaughter charge despite the trial court’s determination that the amendment’s purpose was to gain a tactical advantage as to the defendant’s then-pending motion for discretionary review of the propriety of the original second degree manslaughter charge.

No. 96365-7, *State* (respondent) v. *Numrich* (petitioner). (Oral argument 6/25/20). (*See also*: [Criminal Law—Statutes—Construction—General and Specific Crimes—Manslaughter—Violation of Safety Regulation with Death Resulting; Courts—Powers—Conduct of Litigation—Sanctions—Bad Faith—Express Finding—Absence](#)).

Consolidated with No. 96566-8, *State* (respondent) v. *Numrich* (plaintiff).

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**Insurance—Personal Injury Protection—Construction of Policy—Insured—  
“Pedestrian”—What Constitutes—Bicyclist—State Insurance Law Definition of  
“Pedestrian”—Applicability to Policy**

Whether a bicyclist injured in a collision with a motor vehicle fell within his insurance policy’s personal injury protection (PIP) for “pedestrians” struck by motor vehicles, given that the policy does not define the term “pedestrian” and an insurance statute defines “pedestrian” in the PIP context as anyone “not occupying a motor vehicle.” [RCW 48.22.005\(11\)](#).

No. 97652-0, [McLaughlin \(petitioner\) v. Travelers Commercial Ins. Co. \(respondent\)](#).  
(Oral argument 5/28/20).

[9 Wn. App. 2d 675 \(2019\)](#).

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**Juveniles—Parental Relationship—Dependency—Parallel Criminal  
Investigation—Statements Made in Course of Dependency Services—Derivative  
Use Immunity—Availability**

Whether in dependency proceedings involving a father facing a criminal investigation for child abuse, the superior court erroneously denied the father derivative use immunity for statements he made or may make in the course of court-ordered dependency services.

No. 98094-2, [In re Dependency of A.M.-S.](#) (Oral argument 6/30/20).

[11 Wn App. 2d 416 \(2019\)](#).

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## **Juveniles—Parental Relationship—Termination—Due Process—Continuation of Termination Trial After Finding State Failed to Meet Its Burden of Proof**

Whether the trial court in this parental termination proceeding deprived a parent of her due process rights by continuing the termination trial after finding that the State failed to meet its burden of proof.

No. 98043-8, *In the Matter of the Welfare of D.E., V.E., & M.E.* (Oral argument 6/30/20).

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## **Juveniles—Parental Relationship—Termination—Imprisoned Parent—Absence From Trial—Validity—Due Process**

Whether in this proceeding to terminate parental rights, the trial court violated the imprisoned father's due process rights by conducting most of the termination trial in his absence.

No. 97731-3, *In re the Termination of Parental Rights to M.B.* (Oral argument 5/5/20).

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**Medical Treatment—Taxation—Business and Occupation Tax—Health Organizations—Income Deductions—Government Funding—Medical Assistance or Children’s Health Programs—Limitation to State Programs—Validity—Dormant Commerce Clause**

Whether under [RCW 82.04.4311](#), the business and occupation tax deduction for compensation that health care organizations receive through serving Medicaid and Child Health Insurance Program patients is limited to Washington-administered programs, and if so, whether the deduction discriminates against interstate commerce in violation of the commerce clause of the United States Constitution.

No. 97557-4, *Peacehealth St. Joseph Med. Ctr., et al. (petitioners) v. State, Dep’t of Revenue (respondent)*. (Oral argument 5/26/20).

[9 Wn. App. 2d 775 \(2019\)](#).

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**Municipal Corporations—Annexation—Void Order—What Constitutes—Jurisdiction—Subject Matter Jurisdiction**

Whether a 1985 King County Superior Court order annexing an area in Snohomish County to the Ronald Wastewater District was void when issued on the basis that the court lacked subject matter jurisdiction or statutory authority to order the annexation.

No. 97599-0, *Ronald Wastewater Dist., et al (petitioners) v. Olympic View Water & Sewer Dist., et al. (respondents)*. (Oral argument 5/26/20).

[King County Petition for Review](#).

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## **Open Government—Public Meetings—“Public Agency”—What Constitutes—Washington State Bar Association**

Whether, in this lawsuit claiming that the Washington State Bar Association violated the Open Public Meetings Act, the trial court correctly determined that the bar association is a “public agency” for purposes of the act.

No. 97249-4, *Beauregard* (respondent) v. *Wash. State Bar Ass’n* (petitioner). (Oral argument 6/23/20).

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## **Personal Restraint—Grounds—Punishment—Sentence—Indeterminate Sentence—Conditional Release—Geographical Restriction—Validity—Right to Travel**

Whether in conditionally releasing an offender serving an indeterminate prison term for a sex offense, the Indeterminate Sentence Review Board violated the offender’s constitutional right to travel by prohibiting him from traveling to or through Clark County without prior written permission of his community custody officer and the board.

No. 97452-7, *In re Pers. Restraint of Winton* (respondent). (Oral argument 5/14/20).

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## **Personal Restraint—Petition—Timeliness—“Placeholder Petition”—Validity**

Whether the Court of Appeals had discretion to treat a personal restraint petition as timely filed when the petitioner filed a “placeholder” petition without substantive claims just before the one-year time limit on collateral review expired and then after the time limit expired filed a substantive amendment to the petition asserting an otherwise untimely claim of ineffective assistance of counsel.

No. 97456-0, *In re Pers. Restraint of Fowler* (petitioner). (Oral argument 6/23/20). (See also: [Personal Restraint—Petition—Timeliness—Statutory Limits—Equitable Tolling—Test](#)).

[9 Wn. App. 2d 158 \(2019\)](#).

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## **Personal Restraint—Petition—Timeliness—Statutory Limits—Equitable Tolling—Test**

Whether equitable tolling may be applied to an otherwise untimely personal restraint petition when the petitioner’s first attorney failed to communicate with him and resigned from the Washington State Bar Association in lieu of discipline, and the petitioner learned of this fact only two weeks before the one-year time limit on collateral review expired.

No. 97456-0, *In re Pers. Restraint of Fowler* (petitioner). (Oral argument 6/23/20). (See also: [Personal Restraint—Petition—Timeliness—“Placeholder Petition”—Validity](#)).

[9 Wn. App. 2d 158 \(2019\)](#).

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**Personal Restraint—Petition—Timeliness—Statutory Limits—Exceptions—Significant Change in Law—Appellate Decision—Retroactivity—*O’Dell* Case**

Whether this court’s decision in *State v. O’Dell*, 183 Wn.2d 680, 696, 358 P.3d 359 (2015), or the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), constitutes a significant, material, and retroactive change in the law under RCW 10.73.100(6), exempting from the time limit on collateral relief a personal restraint petition challenging a sentence of life without release for aggravated first degree murder brought by a petitioner who was 20 years old when he committed the offense.

No. 96772-5, *In re Pers. Restraint of Monschke* (petitioner). (Oral argument 5/14/20).

Consolidated with No. 96773-3, *In re Pers. Restraint of Bartholomew* (petitioner).

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**Sexual Offenses—Evidence—Hearsay—Exception—Hue and Cry—Continued Validity—Timeliness After Crime**

Whether in sexual offenses prosecutions, the “fact of complaint” or “hue and cry” hearsay exception should be abandoned as antiquated, and if not, whether the complaint in this case was timely made after a series of alleged offenses occurring over a period of years.

No. 97496-9, *State (respondent) v. Martinez (petitioner)*. (Oral argument 6/9/20).

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**Statutes—Initiatives—I-976—Limitation on Vehicle License Fees and Taxes—Validity—State Constitution—Single Subject and Subject in Title—Amendment of Existing Statutes—Overriding Results of Local Elections—Privileges and Immunities—Separation of Powers—Impairment of Contracts**

Whether voter-approved Initiative 976, which limits or repeals certain vehicle license fees and taxes, is contrary to the Washington Constitution in that it violates the single subject and subject in title rules, amends existing statutes without setting forth those statutes in full, overrides the results of local elections, violates the privileges and immunities clause, violates separation of powers principles, and impairs obligations of contracts.

No. 98320-8, *Garfield County Transp. Auth. et al.*, (appellants/cross-respondents) v. *State*, (respondent/cross-appellant). (Oral argument 6/30/20).

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**Torts—Immunity—Communication to Government Agency—“Person”—Government Contractor**

Whether in this lawsuit stemming from a law firm’s independent investigation of a government employee under a contract with the employing agency, the firm is a “person” for purposes of immunity against liability for communications to government agencies under [RCW 4.24.510](#).

No. 97734-8, *Leishman* (respondent) v. *Ogden Murphy Wallace, PLLC, et al.* (petitioner). (Oral argument 6/9/20).

[10 Wn. App. 2d 826, 451 P.3d 1101 \(2019\)](#).

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**Vendor and Purchaser—Option to Purchase—Exercise of Option—Time of Performance—Equitable Grace Period—Inequity of Forfeiture—Significant Improvements to Land—Necessity**

Whether it is necessary for a forfeiture to be inequitable to justify granting an equitable grace period to allow a late exercise of an option to purchase land, and if so, whether significant improvements must have been made to the land to establish that a forfeiture would be inequitable.

No. 97690-2, *Borton & Sons, Inc.* (respondent) *v.* *Burbank Properties, LLC* (petitioner). (Oral argument 5/28/20). (See also: [Declaratory Judgment—Summary Judgment—Equitable Relief—Review—Standard of Review](#)).

[9 Wn. App. 2d 599 \(2019\)](#).

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**Waters—Water Rights—Priority—Minimum Instream Flows—Determination—Instream Values—Protection of Fish—Consideration of Other Values—Necessity**

Whether the Department of Ecology exceeded its statutory authority or acted arbitrarily or capriciously by setting the minimum instream flow of the lower Spokane River based primarily on the needs of fish and fish habitat without considering other instream values listed in [RCW 90.54.020\(3\)\(a\)](#) to the fullest extent possible.

No. 97684-8, *Ctr. for Env'tl. Law & Policy, et al.* (respondents) *v.* *State, Dep't of Ecology* (petitioner). (Oral argument 5/14/20).

[9 Wn. App. 2d 746 \(2019\)](#).

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**Witnesses—Privileges—Attorney-Client Privilege—Scope—Corporate Client—  
Ex Parte Communication with Nonemployee Physician—Ex Parte  
Communication with Employee Social Worker or Nurse—Validity**

Whether in a lawsuit alleging that a hospital or its employees improperly released a patient's medical records to police, counsel for the hospital is entitled under the attorney-client privilege to have ex parte communications with a physician who works at the hospital and treated the patient but is not employed by the hospital, and whether counsel is entitled under the privilege to have ex parte contact with nonphysician hospital employees.

No. 97783-6, *Hermanson* (respondent) v. *MultiCare Health Sys.* (petitioner). (Oral argument 6/11/20).

10 Wn. App. 2d 343, 448 P.3d 153 (2019).